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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-9
 Chapter 9

**CITY OF STOCKTON'S REVISED
 AND AMENDED MOTION FOR
 ORDER PURSUANT TO 11 U.S.C. §
 365(D)(4) EXTENDING TIME WITHIN
 WHICH THE CITY MUST ASSUME
 OR REJECT UNEXPIRED LEASES OF
 NONRESIDENTIAL REAL
 PROPERTY**

Date: July 18, 2013
 Time: 10:00 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

23 Pursuant to § 365(d)(4) of title 11 of the United States Code (the "Bankruptcy Code"), the
 24 City of Stockton, California (the "City"), the debtor in the above-captioned case, moves the Court
 25 for entry of an order, substantially in the form of Exhibit A, granting an extension of the time
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1 within which the City must assume or reject unexpired leases of nonresidential real property¹. In
2 support of its motion, the City represents as follows:

3 JURISDICTION AND VENUE

4 The Court has jurisdiction over this motion and the relief requested herein pursuant to 28
5 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue
6 for the motion is proper in this court pursuant to 28 U.S.C. §§ 1408 and 1409.

7 BACKGROUND

8 The opinion regarding the City's eligibility for chapter 9 relief demonstrates that the Court
9 is intimately familiar with the complex facts of the City's bankruptcy case. *See In re City of*
10 *Stockton, Cal.*, --- B.R. ---, 2013 WL 2629129 (Bankr. E.D. Cal. June 12, 2013) [Dkt. No. 950].
11 Accordingly, the City is omitting the customary background description of the events leading to
12 and following its petition for relief on June 28, 2012, and instead begins this motion with the
13 background relevant to unexpired leases of nonresidential real property.

14 Prior to filing its petition for relief on June 28, 2012, the City had entered into six
15 transactions involving leases/leaseback financings to fund various public capital improvements.
16 In each transaction, the City entered into a lease for nonresidential real property (each a "Lease")
17 that requires the City to pay rent for the use and occupancy of the leased property². The Leases,
18 as well as the real party or parties in interest³ and Indenture Trustee for each, are as follows:⁴
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21 ¹ The form of motion filed on July 3, 2013, was a prior and superseded draft. This revised and amended version does
22 not alter the substance of that prior version, but is more complete and accurate. The form of order attached hereto as
Exhibit A reflects this revised and amended motion.

23 ² Although described as lease transactions, the City believes that certain of these transactions could be classified as
24 secured loan transactions. Such transactions are included in this motion only in an abundance of caution in the event
that such transactions are classified as true leases and, as set forth herein, the City and all parties in interest reserves
all rights with respect to these issues.

25 ³ The primary parties in interest to all Leases other than the 2009 Lease are the insurers of the respective bond and
26 certificate of participation obligations. There is no bond insurance for the bonds relating to the 2009 Lease, but all
such bonds are owned by party in interest Franklin California High Yield Municipal Fund and Franklin High Yield
27 Tax-Free Income Fund (collectively, "Franklin Advisers, Inc.")

28 ⁴ Copies of the Leases are attached as exhibits to the Declaration of Vanessa Burke In Support Of City Of Stockton's
Motion For Order Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
Reject Unexpired Leases Of Nonresidential Real Property, filed concurrently with this motion.

Lease	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of June 1, 2003, by and between the Stockton Public Financing Authority (the "Authority"), as sublessor, and the City, as sublessee, Certificates of Participation (Redevelopment Housing Projects), Series 2003A and Taxable Series 2003B (the "2003 Lease")	Ambac Assurance Corporation	Wells Fargo Bank, National Association ("Wells Fargo")
Lease Agreement, dated as of March 1, 2004, by and between the Redevelopment Agency of the City of Stockton (the "Agency"), as lessor, and the City, as lessee, relating to Redevelopment Agency of the City of Stockton Revenue Bonds, Series 2004 (Stockton Events Center–Arena Project) (the "2004 Arena Lease") as amended	National Public Finance Guaranty Corporation ("NPMFG")	Wells Fargo
Lease Agreement, dated as of June 1, 2004, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, Series 2004 (Parking and Capital Projects) (the "2004 Parking Lease")	NPMFG	Wells Fargo
Lease Agreement, dated as of March 1, 2006, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority 2006 Lease Revenue Refunding Bonds, Series A (the "2006 Lease")	NPMFG	Wells Fargo
Lease Agreement, dated as of November 1, 2007, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Variable Rate Demand Lease Revenue Bonds, 2007 Series A (Building Acquisition Financing Project) and Taxable Variable Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition Financing Project) (the "2007 Lease")	Assured Guaranty Corporation; Assured Guaranty Municipal Corporation	Wells Fargo
Lease Agreement, dated as of September 1, 2009, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) (the "2009 Lease")	Franklin Advisers, Inc.	Wells Fargo

While each Lease differs from the others in some respects, the various financings and their Leases share the same fundamental structure: To accomplish each transaction, the City leased

1 nonresidential real property to either the Authority or the Agency (each a “PFA”), and the PFA
2 subleased the property back to the City. The PFA then assigned its right to receive rental
3 payments (along with certain other rights relevant to the enforcement of remedies) under the
4 applicable Lease to a trustee.

5 Finally, the PFA issued bonds, or the trustee issued certificates of participation (“COPs”),
6 and transferred the proceeds to the City for expenditure on capital improvements. Payment of the
7 principal of and interest on the bonds and COPs is made through the applicable trustee, pursuant
8 to, inter alia, the terms of the related indenture or trust agreement, from the proceeds of rental
9 payments received from the City pursuant to the terms of the applicable Lease and related
10 assignment.⁵

11 **RELIEF REQUESTED AND BASIS THEREFORE**

12 Pursuant to Bankruptcy Code § 365(d)(4)(A) – incorporated into chapter 9 cases by
13 Bankruptcy Code § 901(a) – the City must decide whether to assume or reject its unexpired leases
14 of nonresidential property within 120 days of the entry of the order for relief. If no such decision
15 has been made by that date, and absent an extension, the leases are deemed rejected. The Court’s
16 entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered the 120-day period, giving
17 the City until July 30, 2013, to assume or reject its unexpired leases of nonresidential real
18 property. Section 365(d)(4)(B) allows the Court to extend this period by 90 days for cause.
19 Accordingly, the City seeks an order pursuant to § 365(d)(4)(B) extending the period to assume
20 or reject the Leases by 90 days, from July 30, 2013, to and including October 28, 2013.

21 The City emphasizes that it files this motion protectively. Although styled as
22 lease/leaseback arrangements, the Leases may not in fact or law be “leases” within the
23 contemplation of § 365, and by filing this protective motion, the City takes no position on
24 whether the Leases are “leases” within the contemplation of § 365. Similarly, the City does not
25 seek the waiver of any rights of any other party in interest with respect to such issues.

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28 ⁵ The descriptions of the transaction structure are included in the motion for summary purposes only. In the event of any inconsistency between such descriptions and the relevant underlying documents, the underlying documents shall control.

1 **A. Cause Exists to Extend the Time Within Which the City Must Assume or**
2 **Reject Unexpired Leases of Nonresidential Real Property**

3 As noted above, the Court can, for cause, extend by 90 days the period during which the
4 City must assume or reject leases of nonresidential real property. 11 U.S.C. § 365(d)(4)(B)(i).
5 Courts routinely grant extensions of the assumption or rejection period. *In re Victoria Station,*
6 *Inc.*, 875 F.2d 1380, 1384-86 (9th Cir. 1989) (affirming extensions of § 365(d)(4) period; “an
7 order extending the time for a debtor to assume or reject a lease . . . is entered in the routine
8 administration of the court”).

9 The term “cause” as used in § 365(d)(4) is not defined. In determining whether cause
10 exists for an extension of the assumption or rejection period, courts rely on several factors,
11 including: (1) whether the case is exceptionally complex and involves a large number of leases;
12 (2) whether the debtor has had time to intelligently appraise its financial situation and the
13 potential value of its assets in terms of the formulation of a plan; (3) whether the lease is the
14 primary asset of the debtor; (4) whether there is a need for judicial determination of whether a
15 lease exists; (5) whether the lessor continues to receive the rent required in the lease; and (6) any
16 other factors bearing on whether the debtor has had a reasonable amount of time in which to
17 decide whether to assume or reject the lease. *BC Brickyard Assocs., Ltd. v. Ernst Home Ctr., Inc.*
18 *(In re Ernst Home Ctr., Inc.)*, 221 B.R. 243, 253 (9th Cir. B.A.P. 1998) (B. Russell, J. concurring)
19 (discussing the factors for cause considered by courts); *see also In re Burger Boys, Inc.*, 94 F.3d
20 755, 761 (2d Cir. 1996); *In re Victoria Station, Inc.*, 88 B.R. 231, 236 (9th Cir. BAP 1988), *aff’d*,
21 875 F.2d 1380 (9th Cir. 1989); *In re Wedtech Corporation*, 72 B.R. 464, 471-473 (Bankr.
22 S.D.N.Y. 1987). “This list is not exclusive, and a great deal of discretion is left to the court to
23 weigh *all* relevant factors related to the requested extension.” *In re Ernst Home Ctr.*, 221 B.R. at
24 253 (emphasis in original). These factors are satisfied here.

25 The Court’s June 12 eligibility opinion made clear, this case is complex. The City
26 continues to grapple with complex and time-consuming issues, including the formulation of a
27 plan of adjustment and the identification of the universe of potential claimants who are entitled to
28 bankruptcy mailings, and other matters. And the City also continues to negotiate with its key

1 creditors through the mediation process conducted by Judge Elizabeth Perris. As disclosed at the
2 June 12 status conference, the mediation process recently produced settlements with Marina
3 Towers and the Official Committee of Retirees.

4 In addition, there are complex issues relating to whether the Leases are true leases within
5 the meaning of section 365 of the Bankruptcy Code. If the Leases are determined to be secured
6 loans, further issues relating to the proper mechanism for valuation of the underlying collateral
7 may be ripe for litigation. Litigation of these disputes, in addition to the numerous other issues
8 surrounding the Leases, would entail great expense both in terms of time and dollars. In light of
9 the ongoing mediation process, however, it is possible that such litigation will be unnecessary.

10 Without an extension, the City will be compelled prematurely to assume substantial, long-
11 term liabilities under the Leases or to reject the Leases, to the potential detriment of its creditors
12 and other parties in interest. Some of the Leases are of properties that are essential to the City's
13 operations. It would cause significant prejudice to the City if it was forced to make a
14 determination regarding assumption or rejection at this time.

15 **COMPLETE RESERVATION OF RIGHTS**

16 This motion requests no relief other than the extension of time to assume or reject the
17 Leases. The City, Wells Fargo and all other parties in interest, including those named in the chart
18 on page 3, reserve all rights and defenses except solely with respect to the 90-day extension of the
19 time within which the City must assume or reject the Leases. The rights reserved by the parties
20 include, but are not limited to, the following: (1) all rights, defenses and arguments as to whether
21 the Leases are "leases" within the contemplation of § 365; and (2) all rights and arguments with
22 respect to the unlawful detainer suits against the City in the California Superior Court for the
23 County of San Joaquin, case numbers 39-2012-00277622-CU-UD-STK and 39-2012-280741-
24 CU-UD-STK. Moreover, the parties do not waive any rights, defenses or arguments by virtue of
25 any failure to seek payment under the Leases during the period prior to the assumption or
26 rejection of the Leases, and there shall be no implication drawn from or prejudice resulting from
27 any party's failure to seek such payment.
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NO OBJECTION FROM WELLS FARGO

The City has been informed by counsel for Wells Fargo that Wells Fargo, in its capacity as Indenture Trustee, has no objection to a 90-day extension of the time within which the City must assume or reject the Leases.

CONCLUSION

For the foregoing reasons, the City requests that the Court enter the attached proposed order (1) extending the time within which the City must assume or reject the Leases from July 30, 2013, to October 28, 2013, and (2) granting such other and further relief as the Court deems to be just and proper.

Dated: July 5, 2013

MARC A. LEVINSON
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PATRICK B. BOCASH
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By: /s/ Marc A. Levinson
MARC A. LEVINSON
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Exhibit A

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Case No. 2012-32118
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**ORDER PURSUANT TO 11 U.S.C.
 § 365(D)(4) EXTENDING THE TIME
 WITHIN WHICH THE CITY MUST
 ASSUME OR REJECT UNEXPIRED
 LEASES OF NON-RESIDENTIAL
 REAL PROPERTY**

Date: July 18, 2013
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 Judge: Hon. Christopher M. Klein

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1 Based on the City Of Stockton’s Revised And Amended Motion For Order Pursuant To
2 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or Reject Its
3 Unexpired Leases Of Non-Residential Real Property (the “Motion”), and good cause appearing
4 therefor:

5 IT IS HEREBY ORDERED that the period within which the City must assume or reject
6 the following six leases of non-residential real property is extended by 90 days through and
7 including October 28, 2013:

- 8 1. Lease Agreement, dated as of June 1, 2003, by and between the Stockton
9 Public Financing Authority (the “Authority”), as sublessor, and the City, as
10 sublessee, Certificates of Participation (Redevelopment Housing Projects),
11 Series 2003A and Taxable Series 2003B;
- 12 2. Lease Agreement, dated as of March 1, 2004, by and between the
13 Redevelopment Agency of the City of Stockton (the “Agency”), as lessor,
14 and the City, as lessee, relating to Redevelopment Agency of the City of
15 Stockton Revenue Bonds, Series 2004 (Stockton Events Center–Arena
16 Project) as amended;
- 17 3. Lease Agreement, dated as of June 1, 2004, by and between the Authority,
18 as lessor, and the City, as lessee, relating to Stockton Public Financing
19 Authority Lease Revenue Bonds, Series 2004 (Parking and Capital
20 Projects);
- 21 4. Lease Agreement, dated as of March 1, 2006, by and between the
22 Authority, as lessor, and the City, as lessee, relating to Stockton Public
23 Financing Authority 2006 Lease Revenue Refunding Bonds, Series A;
- 24 5. Lease Agreement, dated as of November 1, 2007, by and between the
25 Authority, as lessor, and the City, as lessee, relating to Stockton Public
26 Financing Authority Variable Rate Demand Lease Revenue Bonds, 2007
27 Series A (Building Acquisition Financing Project) and Taxable Variable
28 Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition

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Financing Project); and

6. Lease Agreement, dated as of September 1, 2009, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects); and

IT IS FURTHER ORDERED that the parties reserve all rights as described in the Motion.